

REMARKS

This is responsive to the Decision on Appeal mailed September 1, 2010. In the Decision on Appeal, the rejection of claim 25-33 were reversed and replaced with new grounds of rejection for claims 25-33.

With this Response, claim 25 has been amended. Claims 25-33 remain pending in the application and are presented for consideration and allowance.

Rejection Based on 35 U.S.C. § 102(b)

Claims 25, 26, and 28-33 were rejected under 35 U.S.C. § 102(b) as being anticipated by Nardella U.S. Patent No. 5,733,281 (The Nardella '281 Patent). This rejection includes the sole pending independent claim in the application, i.e., claim 25.

Claim 25 has been amended to include the features of “sensing with a sensor positioned adjacent the electrode the vibration of the organic tissue being ablated wherein the vibration is self-generated in the organic tissue in response to the ablation and the vibration occurs prior to substantial boiling of water in the organic tissue.” Support for this amendment can be found throughout the specification. In particular, the specification sets out the sensed vibration is the mechanical vibration that begins as the water enters phase change prior to boiling (page 3, lines 20-31; page 10, lines 21-25).

The amended features in claim 25 are neither taught in the Nardella '291 Patent nor made obvious in the prior art. The Nardella '281 Patent only teaches sensing vibrations as a result of boiling vibrations. It does not recognize that vibrations occur “prior to... boiling” and that sensing these vibrations can provide an advantage over sensing boiling vibrations. As water is heated, it progresses from liquid to phase change to boiling, which can then progress to a “steam pop,” as a function of time. The particular microphone embodiment referred to in the Decision on Appeal relies on detecting boiling vibrations before reducing power. The time between boiling and steam pop in the tissue, however, can be relatively short. Sensing the claimed vibration provides additional response time to reduce power to an ablation device before a steam pop. The Nardella '281 Patent does not recognize the presence of vibration prior to boiling and thus is not adapted to respond to the vibration as required in the claims.

Because at least the amended claim features are missing from the Nardella '281 Patent, the reference does not anticipate claim 25. Claims 26 and 28-33 depend from independent claim 25, and, by virtue of their dependency, include all of the features of claim 25. Applicant submits that claims 25, 26, and 28-33 are patentably distinguishable from the prior art combination and respectfully requests that the rejection be removed and the claims be allowed.

Rejection Based on 35 U.S.C. § 103(a)

Claim 27 is rejected under 35 U.S.C. §103(a) as being unpatentable over the Nardella '281 Patent as applied to claim 25, in view of Nardella U.S. Patent No. 5,334,193 (The Nardella '193 Patent).

As described above, the Nardella '281 Patent does not include the features of sensing vibration "prior to... boiling." These features are also missing from the Nardella '193 Patent. Because the claimed features are missing from each of the references separately, they cannot appear in any proposed combination of the references. Accordingly, Applicant submits that claim 27 is patentably distinguishable from the prior art combination and respectfully requests that the rejection be removed and the claim be allowed.

CONCLUSION

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to contact Jeffrey J. Hohenshell at Telephone No. (763) 505-8426.

Respectfully submitted,

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Dated

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